

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JERRAL W. JONES,
Plaintiff,

vs.

**ALEXANDRA DAVIS and CYNTHIA
DAVIS f/k/a CYNTHIA DAVIS-SPENCER,**
Defendants,

CIVIL ACTION No. 5:23-cv-00032-RWS

JURY TRIAL DEMANDED

**DAVIS' MOTION TO STRIKE SUPPLEMENTAL DECLARATION OF EXPERT
WITNESS**

Cynthia Davis f/k/a Cynthia Davis Spencer ("Cynthia") respectfully files this Motion to Strike the Supplemental Testimony of Lance Watson and respectfully shows as follows:

I. INTRODUCTION

The parties were required to disclose expert witnesses no later than March 12, 2024. (Dkt. No. 38). Discovery ended on April 23, 2024. (*Id.*). Jones filed a motion for sanctions, attaching Lance Watson's Declaration as an exhibit in support on June 3, 2024. (Dkt. No. 120). On June 7, 2024, almost three months after the original deadline to disclose expert witnesses, Jones late designated his expert witness, after representing to the Court that he had obtained an expert in April or May 2024.

The court requested briefing from the parties on Plaintiff's Motion for Sanctions for the Destruction of Evidence against Alexandra Davis and Cynthia Davis (Dkt., 120). The briefing was due on June 28, 2024. The deposition of the Plaintiff's expert was taken on June 20, 2024. The

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deposition of Defendants' expert was taken on June 25, 2024. The responses due under the court's order were timely filed.

Immediately after the filing of the responses by Defendant, Plaintiff served a Supplemental Declaration of Lance Watson that contradicts his prior testimony (Ex.1). Plaintiff once again did not seek leave to amend nor did he concern himself with the rules or deadlines of this Court. Plaintiff's expert modified his testimony **AFTER his deposition** and only one business day before the hearing on this matter.

II. ARGUMENT

Federal Rule of Procedure 26a provides that the expert disclosure must be made either by the date set by the court or stipulated by the parties, or at least 90 days before the date set for trial. FRCP 26(a)(2). The plaintiff designated their expert twenty-five days prior to the hearing in this matter and has now amended his testimony one business day prior to the hearing. The late filing once again harms Defendants.

Plaintiff's expert waited until briefing had been completed by Defendants in this matter and then proceeded to change his prior testimony with no ability to cross-examine him on his new testimony. The amendment deprives Defendant of the right to confront the witness on his new opinions.

Plaintiff has once again engaged in conduct designated to injure Defendant with no fear of consequences. Jones disregards discovery deadlines, designation deadlines and deadlines set by order of this Court. Jones cannot be rewarded for this ongoing pattern of conduct and thus, the Supplemental Declaration of Plaintiff's expert should be struck.

Defendant reincorporates the allegations in Defendant, Cynthia Davis's Motion to Strike Expert Witness (Dkt, 141), Defendant, Cynthia Davis's Motion to Exclude Evidence (Dkt. 174)

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and Defendant, Alex Davis's Motion to Exclude Testimony of Lance Watson (Dkt. 182) as further evidence of the gamesmanship that Defendants have been subject to.

III. ATTORNEY FEES

Plaintiff has shown a pattern of conduct intended to harm Defendants and unnecessarily increase the costs of litigation. Plaintiff continues to violate the deadlines set by this Court in its Docket Control Order (Dkt, 38). Plaintiff now amends the testimony of its expert witness one business day prior to the hearing in this matter, forcing Cynthia to file this motion in her defense. Plaintiff should be ordered to pay the attorney fees for the drafting of this motion in defense of his untimely filing and continued pattern of conduct.

IV. CONCLUSION

A modification of the testimony and opinions of Plaintiff's expert filed one business day prior what amounts to a dispositive hearing on this matter is undoubtedly untimely and should be struck.

The declaration was once again untimely, and Defendant has been prejudiced and will continue to be if Plaintiff's expert is allowed to testify (and modify his testimony) in this matter. The Supplemental Declaration of Lance Watson should be STRUCK in its entirety.

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Respectfully Submitted,

BALEKIAN HAYES, PLLC

/s/ Kris Hayes .

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ATTORNEYS FOR DEFENDANT
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SPENCER

CERTIFICATE OF SERVICE

On July 1, 2024, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Eastern District of Texas, using the electronic case filing system of the court. I hereby certify that I will serve all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kris Hayes .

KRIS HAYES

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CERTIFICATE OF CONFERENCE

The undersigned counsel hereby certifies that the meet and confer requirement in Local Rule CV-7(h) has been met. The conference required by Local Rule CV-7(h) was conducted via email on June 29, 2024. Davis (Spencer) counsel sent a communication to Plaintiff's counsel informing them of the intent to file this motion and asking whether they were opposed. The email was sent to Jay Gray, Andrew Bergman, Matt Keil, Erin Keil, Kris Hayes, Chip Babcock, Edwin Buffmire, David Folsom, David Moran, Cody Martinez, and the undersigned counsel. Despite best efforts, Davis (Spencer) has not received a response regarding the motion, leaving the issue open for the court to resolve. Defendant Alexandra Davis is unopposed to the motion.

/s/ Kris Hayes .

KRIS HAYES

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